respects affirmed, and the cause remanded for further proceedings, in which such accounts may be ordered as are necessary to ascertain what sums, if any, the appellant is indebted to his mother's estate for the use of her lands. *Reversed.*

NOTE.—In the above opinion it is said: "While the natural and just influence which a parent has over a child renders it peculiarly important for courts to watch over and protect the interests of the latter, and to set aside contracts and conveyances whereby benefits are secured by children to their parents, if they are not entered into with scrupulous good faith, and are not reasonable under the circumstances, *the same rule does not apply where contracts are made by which benefits are secured by the parent to the children.* Instead of such contracts and conveyances being guarded with a jealous eye, they will generally be presumed to be free from suspicion, and the party who claims that they were procured by undue influence must generally prove it."

This opinion does not refer, however, to the case of *Saunders* v. *Greever*, 85 Va. 253, in which, though involving a conveyance from a father to a son by which benefits were secured to the son, the court quoted with approval from 1 Tuck. Com. 130: "Contracts between parent and child are regarded in equity with a jealous eye."

In connection with the above case it will be remembered that generally the services of a child, grandchild, or other near relative, are presumed to have been rendered in obedience to the promptings of affection, and not in view of compensation. Whenever compensation is claimed for such services an express promise must be proved; or facts from which such promise can be reasonably inferred must be established by evidence so clear, direct and explicit, as to leave no doubt as to the undertaking and intention of the parties. A moral obligation to pay is not sufficient. *Jackson* v. *Jackson*, 96 Va. 165; *Saunders* v. *Greever*, 85 Va. 252, 275, and cases cited. G. C. G.

RHEA et al. v. SHIELDS.

Supreme Court of Appeals of Virginia.

December 8, 1904.

[49 S. E. 70.]

JUDICIAL SALES—SALES FOR PERSONS UNDER DISABILITY—SALE OF REMAINDER INTERESTS—DECREES—CONCLUSIVENESS—TITLE OF BONA FIDE PURCHASER—ESTOPPEL.

1. The purpose of Code 1887, sec. 2616 (Code 1904, p. 1332), authorizing guardians of minors, committees of insane persons, and trustees of an estate to file a bill in equity to procure a sale of the real estate for the benefit of the estate, is to invest courts of equity with that jurisdiction in respect to estates of all persons under disability.

2. Under Code 1887, sec. 2616 (Code 1904, p. 1332), authorizing guardians of minors, committees of insane persons, or trustees of an estate to file a bill to procure a sale of the real estate of the minor, insane person, or beneficiary, whether there be or be not limited thereon any other estate, vested or contingent, a court of equity may, at the suit of the trustee of a life estate, sell not only the life estate, but also a remainder limited over to minors as to whom the trust does not extend, in which case the proceeds of the sale or the property in which they are invested, are held upon the same trusts and subject to the same limitations as the property sold.
3. Where the court acquires jurisdiction both of the parties and of the subject matter of litigation instituted under Code 1887, sec. 2616 (Code 1904, p. 1332), authorizing the sale of land belonging to persons under disability, its decree, although erroneous, is conclusive until reversed or set aside.
4. Where the court acquires jurisdiction both of the parties and of the subject-matter of litigation instituted under Code 1887, sec. 2616 (Code 1904, p. 1332), authorizing the sale of land belonging to persons under disability, the title of a *bona fide* purchaser under its decree is valid.
5. Although proceedings instituted under Code 1887, sec. 2616 (Code 1904, p. 1332), authorizing the sale of land of minors and persons under disability are irregular, yet where the minors, after reaching majority, file amended pleadings requesting the sale of the property, they are equitably estopped from objecting to the validity of the sale.
6. A party who has assumed a certain position in a cause and successfully maintained that position is precluded from thereafter assuming an inconsistent postion to the prejudice of one who has acquiesced in the position formerly assumed by him.
7. *Bona fide* purchasers of the legal title to land are not affected by any latent equity founded on a trust, fraud, incumbrance, or other matter, whereof they have no notice, actual or constructive.

Appeal from Law and Chancery Court of City of Norfolk.

Bill in equity by L. H. Shields, trustee, against William H. Rhea and others. From a decree rendered in respect to a sale of the trust property, defendants Rhea appeal. *Affirmed.*

R. Randolph Hicks, for appellants.

D. Tucker Brooke, A. B. Seldner, and *John A. Baecher,* for appellee.

WHITTLE, J.

The real estate which is the subject of this controversy was devised by Robert Rhea, Sr., to his executor, in trust for his son. William H. Rhea, Sr., for life, with remainder to such of his children as should survive him. The property consisted of seven improved lots in the city of Norfolk.

By successive substitutions L. H. Shields succeeded the original trustee appointed by the will, and at August rules, 1889, filed a bill in equity in the corporation court of the city of Norfolk against appellants, William H. Rhea, Sr., and his children, the latter all being infants at that time, for the sale of four of the lots referred to for the payment of taxes, the repairs and improvement of the residue of the property, and the balance of the proceeds of sale to be invested as the court might think best to yield an income for the owners.

The proceedings in the suit were in technical compliance with the statute; and upon the report of a commissioner in chancery, to whom the matter was referred, recommending a sale, the lots indicated were regularly sold under decrees in the cause, the sales confirmed, the purchase money paid into court, and deeds executed and delivered to the purchasers.

The last sale of these lots was made and confirmed in February, 1890. The suit then remained on the docket of the court, without further steps being had therein, until August, 1894, at which time, after all the remaindermen had attained their majority, the trustee and William H. Rhea, Sr. the life tenant, and a defendant in the original bill, filed a joint petition in the cause, in which they allege that the deferred payment of the purchase money for a farm in Northampton county, which had been bought as a home for appellants, was long past due; that the vendor was threatening to sell the property for the unpaid purchase money; and praying that the court would authorize the special commissioner to borrow a sufficient sum to discharge that indebtedness, and secure the loan upon some portion of the Norflok city property still held by the trustee under the will. The remaindermen answered the petition by counsel, and united in its prayer. The loan, however, was not effected, but subsequently, upon the written request of all parties in interest, the court decreed a sale of the lot on Cumberland street.

The property was accordingly sold, and the sale confirmed, the purchaser complying with the terms and receiving a conveyance. The decree of confirmation of February 23, 1895, was entered by the court of law and chancery of the city of Norfolk, which was established in 1895, and to which court, by force of the statute, this suit, together with all other chancery causes pending in the corporation court, was regularly transferred.

In April, 1897, the trustee, William H. Rhea, Sr., and W. W. Sale, a temporary receiver, presented another petition to the court, in which, after reciting the proceedings in the cause and the fact that creditors in a deed of trust for upwards of $4,000, which had been placed upon a lot on Union street by authority of a former decree, intended to enforce their lien, they prayed that a sale of the property might be made to one H. Davis, at a private offer made by him, to satisfy the lien. Thereupon Davis exhibited his petition to the court, in which he alleged that the proceedings in the cause were not regular, and sought to be relieved from his bid. To obviate the objection urged by him to the regularity of the proceedings, the trustee and William H. Rhea, Sr., filed an amended and supplemental bill for the purpose of selling the lot in question, to which the remaindermen were made parties. These defendants, who, as remarked, were then of age, by their answer united in the prayer of the bill. There was a reference to a commissioner to ascertain, among other matters, whether the bid of Davis was a fair and sufficient one for the property; whether the interests of all parties directly or contingently interested in the property, would be promoted by the sale, or the rights of any party would be violated thereby.

Upon the report of the commissioner, which was not excepted to, that Davis' bid of $5,500 was a fair price for the lot; that the interests of the persons directly or contingently interested in the property would be promoted by the sale; that all persons living who had any interest in the property were properly before the court as parties to the suit; and that the suit was in regular form, and the court had a right to sell the property—the bid of Davis was accepted and the sale to him confirmed.

In February, 1898, practically similar proceedings were had with respect to the lot on Cumberland street, which resulted in a public sale of that property to one of the appellees at the price of $2,615.

Upon the foregoing facts appellants contend that it was not permissible, under sec. 2616 of the Code of 1887 as amended (Code 1904, p. 1332), for a court of equity, at the suit of the trustee of a life estate in land, to sell not only the life estate, but also the remainder limited on that estate, over which the trust did not extend; that the decrees were therefore nullities; that the proceedings under them passed no right or title to the lots in controversy to appellees;

that the court erred in dismissing appellants' petition to rehear the cause, and in refusing to declare the decrees and sales made in pursuance of them void, and of no effect.

The doctrine in this state is well settled that courts of equity possess no inherent power, as guardians of infants, to sell their real estate for the purpose of reinvestment, and the obvious purpose of the statute under which these proceedings were had is to invest those courts with that jurisdiction in respect to estates of all persons under disability.

The statute is highly remedial, and upon familiar principles must receive a liberal construction to give effect to the intention of the legislature and enhance the remedy. See authorities cited in note to sec. 2616, 2 Va. Code, 1904, Annotated, p. 1333.

But in addition to the foregoing considerations, the contention of appellants is opposed to the construction heretofore placed upon the statute and the course of judicial procedure under it, which has obtained for many years—certainly since the decision in the case of *Faulkner* v. *Davis*, 18 Gratt. 652, 98 Am. Dec. 698. The practice has been to sell or exchange the absolute estate, in place of which the proceeds of sale, or the subject in which they are invested, or for which the property is exchanged, are held upon the same trusts and subject to the same limitations as the original estate.

The facts in the case of *Faulkner* v. *Davis, supra,* were as follows: Two vacant lots in the city of Richmond were conveyed in trust for Norton and his wife and the survivor of them for life, and upon the death of the survivor to be conveyed by the trustee to their children living at the death of the survivor, and the descendants of such of the children as should be then dead leaving descendants; and upon the further trust that, if Norton should think it expedient to sell the lots, or any part of them, the trustee should permit him to do so; the proceeds of sale to be secured and held upon the same trusts. Norton died, without having sold the lots, survived by his wife and five children, and a bill was filed by his widow against the children and trustees for a sale of the lots. This court held that, while courts of equity in Virginia have no authority under their general jurisdiction to sell real estate belonging to infants, they did possess jurisdiction by statute to sell land in which infants were interested, whether in possession or remainder, vested or contingent, if the proper parties could be brought before

the court. Judge Moncure, speaking for the court, at page 675, 18 Gratt., 98 Am. Dec. 698, says: "Of course, the sale in that case was of the entire and absolute estate, and not of the contingent interest merely. The proceeds of sale and the subject in which they might be invested were to stand in the place of the estate sold, and be subject to the same uses and limitations." The opinion treats the subject exhaustively, and gives in detail the history of the legislation with respect to such sales in Virginia.

In the still earlier case of *Cooper* v. *Hepburn,* 15 Gratt. 551, it was held that a father, as guardian of his infant children, could maintain a suit to sell real estate held by himself for life and by his children in remainder.

So that, whatever may be said of appellants' contention as an original proposition, these decisions have adopted a different construction, and titles to property throughout the commonwealth have been acquired and rights become vested on the faith of it, and a departure from that construction at this time would be disastrous and indefensible, even if the court, as at present constituted, were of a contrary opinion.

It follows from what has been said that the corporation court and the court of law and chancery of the city of Norfolk acquired jurisdiction both of the parties and the subject matter of the litigation; and where that is the case, although the decrees may be erroneous, they are nevertheless conclusive until reversed or set aside.

It also follows that the titles of appellees, who are *bona fide* purchasers for value, and without notice, to the lots first sold, are valid, and must be upheld.

In *Zirkle* v. *McCue,* 26 Gratt. 517, the court said: "The only matter for inquiry is: Did the court have jurisdiction of the subject-matter? Were the proper parties before it? Were the proceedings regular? Was the sale proper, under all the circumstances then surrounding the parties? If so, there is no pretense for interfering with the title of an innocent purchaser, because in the light of subsequent occurrences the sale has proven injudicious and unfortunate for the interests of the infants."

It will also be remembered that the remaining lots were sold under decrees, upon amended pleadings in the cause, at the instance and request of the parties, all of whom were at that time adults; and, whatever may be said of the irregularity of the proceedings,

they are now equitably estopped from objecting to the validity of sales made at their own solicitation.

"A person who causes his land to be sold for some purpose of his own under a judicial proceeding which turns out to be void, and receives and retains the proceeds of sale, cannot afterwards be heard to question its validity. He has made his election." *Williamson* v. *Jones* (W. Va.), 19 S. E. 436, 25 L. R. A. 222; *Fairfax* v. *Muse's Ex'rs,* 4 Munf. 124.

Such conduct would also violate the rule whereby a party who has assumed a certain position in a cause and successfully maintained that position is precluded from thereafter assuming an inconsistent position, if it be to the prejudice of one who has acquiesced in the position formerly assumed by him. *Davis* v *Wakelee,* 156 U. S. 680, 15 Sup. Ct. 555, 39 L. Ed. 578; *Daniels* v. *Tearney,* 102 U. S. 415, 26 L. Ed. 187; *C. & O. Ry. Co* v. *Rison,* 99 Va. 19, 37 S. E. 320.

It must be observed that the only persons who are made defendants, and whose rights are sought to be affected by the petition to rehear, are appellees, all of whom belong to that favored class in a court of equity *bona fide* purchasers for value, and without notice. As to such purchasers, this court has declared that "it is settled law that a *bona fide* purchaser of the legal title is not affected by any latent equity founded on a trust, fraud, incumbrance, or otherwise, whereof he had no notice, actual or constructive." *Carter* v. *Allen,* 21 Gratt. 241; *Iron Co.* v. *Trent,* 83 Va. 397, 2 S. E. 713, 5 Am. St. Rep. 285; *Bank* v. *Blanchard,* 90 Va. 22, 17 S. E. 742.

While the court feels constrained to hold that the petition was properly rejected as to these defendants, an examination of the record makes it painfully apparent that there has been a miscarriage of justice in the case, a result brought about by the misconduct of the trustee and former counsel of these unfortunate litigants, by whose malversation and imposition on the courts they have been stripped of a valuable inheritance. The situation is rendered the more regretable by the circumstance that the property has passed beyond the court's control, and it is powerless to repair a great wrong.

The developments in the case accentuate the necessity for the exercise of such vigilance on the part of trial courts, in dealing with this class of cases, as will render the recurrence of similar results

impossible; otherwise a benign statute specially enacted for the protection of the unfortunate may be converted into an instrument for their destruction.

There is no error in the decree complained of, and it is affirmed.

Affirmed.

NOTE.—We report with pleasure the above decision, not so much for what it decides, but as showing that our Supreme Court again respects the doctrine of *stare decisis*. which it so utterly disregarded in the recent case of *Hortenstein* v. *Virginia Carolina Ry. Co.*, 102 Va. 914, 10 Virginia Law Register, 312.

It is in our opinion infinitely better to have bad laws than to have any uncertainty as to what is law. As said in *South* v. *Thomas*, 23 Ky. 63, "Attempts to change the course of judicial decisions under the pretext of correcting errors are like experiments by the quack on the human body. They constantly harass, and often jeopardize it." And again, in *Tribble* v. *Taul*, 23 Ky. 456: "In the Supreme Court of a State, as this is, possessing with but few exceptions appellate judicial power co-extensive with the State, the influence which its decisions must have is evident. Its mandates are conclusive, and even its dicta are attended to in all the inferior courts. No sooner is a decision published than it operates as a pattern and standard in all other tribunals, and, as a matter of course, all other decisions conform to it. If, in this court, a settled course of adjudication is overturned, then the trouble and confusion of reversing former causes succeeds in the inferior tribunals; and even the credit and respect due to this court is shaken by the phenomenon that A has lost his cause on the same grounds that B gains his. And not only do these consequences follow, but some still more serious may ensue; for perhaps no court may strike the vitals of society with a deeper wound than a capricious departure in this court from one of its established adjudications."

It is the well settled doctrine established throughout the United States that a court will not permit a question once fully decided in a former case to be reargued. *Haynes* v. *Pickett* (U. S.), 23 Law. Ed. 1008; *U. S.* v. *422 Casks of Wine*, 1 Pet. 547, 7 Law. Ed. 257; *Davies* v. *Slidell* (U. S.), 23 Law. Ed. 871.

It is, however, a maxim not to be disregarded that general expressions are to be taken only in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point in presented for a decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent; but other principles which may serve to illustrate it are considered only in their relation to the case decided, and every possible bearing on them is seldom completely investigated. *Cohens* v. *Virginia*, 6 Wheat 265, 5 Law. Ed. 257; *Gaines* v. *Hennen*, 24 How. 553, 16 Law. Ed. 770; *U. S.* v. *Bank of U. S.*, 5 How. 382, 12 Law. Ed. 199; *Florida Central Ry. Co.* v. *Schutte*, 103 U. S. 118, 26 Law. Ed. 327; *Griffin* v. *Woolford*, 100 Va. 473. Indeed, in Virginia, in the case of *C. & O. Ry Co.* v. *Washington etc. Ry. Co.*, 99 Va. 715, it was decided that a court is not bound by a prior opinion delivered in another case where it appears that the court was composed of four judges, two of whom concurred only in results, and one dissented.

In this case the case of *Alexandria Ry. Co.* v. *Alexandria Ry. Co.*, 75 Va. 780, was disapproved.

Not only is it the duty of a court to follow a previous decision upon a question which it has once fully decided, but, in cases in which a change of decision will impair the obligation of a contract, it has been held that the court *must* do it.

In the case of *Gelpcke* v. *The City of Dubuque*, 1 Wall. 175, it was decided that if a contract when made is valid under State Constitution and laws as then expounded by the government and administered in its courts, it cannot be impaired, either by subsequent legislation or a change in judicial construction of existing law. And again, in the case of *Louisiana* v. *Pilsburg*, 105 U. S. 278, it was decided that contracts valid according to construction of law when issued cannot be impaired by subsequent decisions altering that construction. In a note by Mr. Rose to the Gelpcke case, the whole subject of impairing obligations of contracts by judicial decisions is threshed out. Among other things he says:

"The principle is strictly in the nature of an exception to the general rule. Some of the citing cases note this and show no disposition to extend it. *Braun* v. *Board of Commrs.*, 66 Fed. 479; *Blossburg etc. R. R.* v. *Tioga R. R.*, 5 Blatchf. 392, F. C. 1, 563; *Van Bokelen* v. *Brooklyn R. R.*, 5 Blatchf. 381, F. C. 16, 830; *Lavin* v. *Emigrant etc. Bank*, 18 Blatchf. 12, 1 Fed. 650; another refuses to apply the principle where there was no contract resting upon the earlier overruled decision, *Town of Hardinsburg* v. *Cravens*, 148 Ind. 9, 47 N. E. 155; and others deny its applicability where the later decision merely misconstrues, without impairing any contract, *Central Land Co.* v. *Laidley*, 159 U. S. 111, 112, 40 L. 94, 95, 16 S. Ct. 82, and *McLure* v. *Melton*, 24 S. C. 568, 58 Am. Rep. 276. So also it has been held that the change in the judicial decisions must affect the construction of written law to render the Gelpcke doctrine applicable—*Ray* v. *Natural Gas Co.*, 138 Pa. St. 591, 21 Am. St. Rep. 927, 20 Atl. 1067, 12 L. R. A 293, and n. Other cases decline to recognize the applicability of the rule where the earlier decision is isolated or not based upon full examination of the point. *McLure* v. *Melton*, 24 S. C. 568, 58 Am. Rep. 276, and *Keokup etc. R. R.* v. *County Court, etc.*, 41 Fed. 310. The court will follow the latest rather than the earlier decisions; also where the earlier deny the validity of railroad or other municipal bonds and subsequent cases affirm them. *Wade* v. *Travis County*, 174 U. S. 509, 19 S. Ct. 719; *King* v. *Wilson*, 1 Dill. 558, 568, F. C. 7, 810. . . ."

"The principle of the Gelpcke case has had its influence in a number of State court cases . . . and comes in for a qualified application as authority for the doctrine that the decisions of courts enter into and become a part of contracts made in reliance thereupon, and must be adhered to in actions upon such contracts, notwithstanding their subsequent modification or overthrow. This application of the principle has been made in adhering to an early decision as to vendor's equitable lien, *Napier* v. *Jones*, 47 Ala. 96; to an early law as to sale of decedent's real estate, *Smitha* v. *Flournoy*, 47 Ala. 360; to an early decision affirming right of action against municipality for tort, *Davis* v. *City Council*, 51 Ala. 146, 23 Am. Rep. 549; or respecting married women's rights, *Farrior* v. *New England Mfg. Co.*, 92 Ala. 180, 9 So. 533; or respecting the rights of heirs to sell decedent's realty, where rights of *bona fide* purchasers required protection, *Haskett* v. *Maxey*, 134 Ind. 191, 33 N. E. 360, 19 L. R. A. 382, and *Stephenson* v.

Boody, 139 Ind. 66, 38 N. E. 333; or the validity of a sale of a ward's real estate, *Hall* v. *Wells*, 54 Miss. 301; or of partition proceedings, *Herndon* v. *Moore*, 18 S. C. 354; or as to assignment of mortgages, *Nashville Trust Co.* v. *Smythe*, 94 Tenn. 518, 45 Am. St. Rep. 750, 29 S. W. 904, 27 L. R. A. 665. Other State courts citing cases have relied upon this principle in upholding rights of third parties under a decree afterwards reversed, *Wadham* v. *Gray*, 73 Ill. 423; in adhering to decree adjudging the validity of the exercise of certain powers of appointment conferred by a will, *Wickersham* v. *Savage*, 58 Pa. St. 369; in upholding settled construction of bank license law, *State* v. *Comptoir Nat. etc.*, 51 La. Ann. 1278, 26 So. 94; in protecting a contract formed under the law when it allowed recovery of costs by creditor, *Long* v. *Walker*, 105 N. C. 110; in holding payments of taxes at time when law was adjudged valid could not be recovered upon its subsequent annulment, *Vermont etc. R. R.* v. *Central etc. R. R.*, 63 Vt. 23, 21 Atl. 267, 10 L. R. A. 565; in deciding that refusal of coupons in payment of State taxes, in conformity with the decisions of the courts, could not be affected by their subsequent abrogation, *Whaley* v. *Gaillard*, 21 S. C. 572; and in holding a ten year tax exemption valid under the decisions, when conferred, could not be affected by later change in rule, *Opinion of Judges*, 58 N. H. 625. One case argued from the Gelpcke decision that the State courts had the same election as to which of conflicting Federal authorities it should follow, *State ex rel.* v. *Doyle*, 40 Wis. 215. The principle case is cited also upon the syllabus point here under discussion in *Verdin* v. *St. Louis*, 131 Mo. 174, 33 S. W. 520, dissenting opinion, arguing that a previous decision on the validity of a paving tax should be adhered to; in dissenting opinions in *State ex rel.* v. *Pilsbury*, 31 La. Ann. 29, and *Gage* v. *Gage*, 66 N. H. 301, 29 Atl. 552, 28 L. R. A. 864, and n. *arguendo*; and also, *arguendo*, in *Boyd* v. *State*, 53 Ala. 608. Cited in 14 Am. Rep. 288, note, and in valuable note on conflict of State and Federal decisions, in 28 Am. Dec. 681."

In the case of *Postal Tel. Co.* v. *Ry. Co.* 96 Va. 661, it was held that where a decision has been followed in other cases, has been long acquiesced in, and become a rule of property, it is of binding force, and should not be changed except by legislative enactment.

G. C. G.